FILE COPY

No. 34, 14

In the Supreme Court of the United States

October Term, 1936

ROLLA W. CLEVELAND, W. A. HARMAN, CLAYTON C. HOUSTON, ET AL., PETITIONERS

v.

CLARENCE W. MILLER, AS SECRETARY OF THE SENATE OF THE STATE OF KANSAS, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

ALBERT BENJAMIN CHANDLER, INDIVIDUALLY AND AS GOVERNOR OF THE COMMONWEALTH OF KENTUCKY, ET AL., PETITIONERS

v.

JAMES W. WISE AND RAY H. MOSS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

BRIEF FOR THE UNITED STATES AMICUS CURIAE

INDEX

CITATIONS

99116—38——1

Miscellaneous—Continued. Page

Miscellaneous—Continued.

Miscellaneous—Continued.

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 7

ROLLA W. COLEMAN, W. A. BARRON, CLAUDE C. BRADNEY, ET AL., PETITIONERS

v.

CLARENCE W. MILLER, AS SECRETARY OF THE SENATE OF THE STATE OF KANSAS, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

No. 14

ALBERT BENJAMIN CHANDLER, INDIVIDUALLY AND AS GOVERNOR OF THE COMMONWEALTH OF KENTUCKY, ET AL., PETITIONERS

v.

JAMES W. WISE AND RAY B. MOSS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

BRIEF FOR THE UNITED STATES AMICUS CURIAE

OPINIONS BELOW

The opinion of the Supreme Court of Kansas in No. 7 (R. 34–51) is reported in 146 Kan. 390. The

opinion of the Court of Appeals of Kentucky in No. 14 (R. 34–55) is reported in 270 Ky. 1.

JURISDICTION

In No. 7 final judgment was entered September 16, 1937, and rehearing denied October 16, 1937 (R. 31–32, 61). Time for filing petition for certiorari was extended (R. 64) and certiorari was granted March 28, 1938. In No. 14 final judgment was entered December 17, 1937 (R. 33). Time for filing petition for certiorari was extended (R. 56) and certiorari was granted April 11, 1938. The jurisdiction of this Court rests on Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the ratifications of the proposed Child Labor Amendment by the legislatures of Kansas and Kentucky are invalid by reason of the prior rejection of the Amendment in those States or by reason of the prior rejection of the Amendment in more than one fourth of the States.

2. Whether the proposed Child Labor Amendment was no longer susceptible of ratification by reason of the time elapsed since its submission.

3. Whether the constitutional questions decided by the state courts may properly be reviewed by this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article V of the Constitution of the United States:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

The proposed Amendment relating to the regulation of child labor reads as follows (43 Stat. 670):

> JOINT RESOLUTION Proposing an amendment to the Constitution of the United States.
>
> *Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled (two-thirds of each House concurring therein)*, That the follow-

ing article is proposed as an amendment to the Constitution of the United States, which, when ratified by the legislatures of three-fourths of the several States, shall be valid to all intents and purposes as a part of the Constitution:

"ARTICLE —.

"SECTION 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

"SEC. 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress."

F. H. GILLETT
Speaker of the House of Representatives.

ALBERT B. CUMMINS
President pro tempore of the Senate.

I certify that this Joint Resolution originated in the House of Representatives.

WM. TYLER PAGE
Clerk.

Deposited in the Department of State, June 4, 1924.

STATEMENT

In both the Kansas and Kentucky cases the complainants are citizens and members of the state legislatures who voted against ratification of the proposed Child Labor Amendment. In each case the defendants are officers of the two houses of the legislature, with the addition in the Kansas case of

the State itself as a defendant, and in the Kentucky case of the Governor of the State. In each case the validity of the resolution of ratification was challenged on the ground that the State, having once rejected the amendment, could not thereafter ratify; that since more than one-fourth of the States had rejected the amendment no State could thereafter ratify; and that the amendment was no longer susceptible of ratification because of the lapse of time since its submission.[1]

In the Kentucky case the complainants sought an injunction to restrain the Governor and other defendants from notifying the Secretary of State of the United States of the passage of the resolution of ratification. As the Governor, without knowledge of the pendency of the suit, had transmitted such notification to Washington on the day suit was begun, the relief sought was amended to request a mandatory injunction directing the Governor to notify the Secretary of State that the resolution of ratification was void and that the prior notification should be disregarded (No. 14, R. 11–12, 25, 34–35). In the Kansas case the complainants sought a writ of mandamus to compel the erasure of the indorsement of the ratifying resolution, and an injunction

[1] In the Kansas case the additional argument was made that the ratification was invalid because the Lieutenant Governor of the State was not entitled to cast the deciding vote in the Senate. This question was decided adversely to the complainants by the Supreme Court of Kansas and is not discussed herein.

against the defendants restraining them from causing the resolution to be enrolled, signed, certified, published, or delivered to the Governor or transmitted to the Secretary of State of the United States (No. 7, R. 10–11).

Both courts entertained the suits and passed on the constitutional questions raised.

The Kansas court sustained the validity of the ratifying resolution but stayed its judgment pending final decision by this Court, the resolution meanwhile having been ordered placed in the custody of the court (No. 7, R. 19, 62).

The Kentucky court held the ratifying resolution invalid and, in lieu of issuing a mandatory injunction directed against the Governor, ordered that an authenticated copy of its judgment be transmitted to the Secretary of State of the United States (No. 14, R. 55). The records of the Department of State show that on December 13, 1937, there was received a communication from the Clerk of the Franklin Circuit Court of Kentucky, dated December 11, 1937, enclosing a certified copy of the judgment of that court on the remand to it by the Court of Appeals, and of the opinion and mandate of the Court of Appeals entered November 6, 1937. The communication stated that "the Resolution adopted by the Kentucky Legislature on January 13th, 1937, purporting to ratify the proposed Child Labor Amendment to the Constitution of the United States has been held invalid by this Court and the

Kentucky Court of Appeals, and that the proposed amendment has not been ratified by the Legislature of Kentucky according to the provisions of the Constitution of the United States. You are notified that the notice sent you by Honorable A. B. Chandler, Governor of Kentucky, dated January 15th, 1937, was and is void and of no effect." Subsequently, on January 3, 1938, as shown also by the records of the Department of State, counsel for complainants transmitted to the Secretary a certified copy of the mandate of the Court of Appeals of Kentucky, affirming the judgment of the Franklin Circuit Court of December 6, 1937, and constituting the final judgment of the Court of Appeals.

In the Kansas case the petition for certiorari was filed by the complainants below, and in the Kentucky case by the defendants below. The petitions were granted by this Court on March 28, 1938, and April 11, 1938, respectively.

SUMMARY OF ARGUMENT

I

The ratifications of the Child Labor Amendment by Kansas and Kentucky are not invalid by reason of the fact that the legislatures of those States had previously rejected the amendment. Article V of the Constitution speaks in terms of ratification; the concept of rejection is extra-constitutional. If that concept is introduced as a constitutional limitation, the effect will be confusion and uncertainty,

since definitions of the concept of rejection will vary. The deliberative and legislative character of the ratifying process supports the view that a state should be at liberty to renounce a prior rejection. The adoption of the Fourteenth Amendment assumes the power of the States to change from a negative to an affirmative position with respect to a proposed amendment, and this power appears to have been recognized by both the executive and legislative branches of the Government on that occasion. The same understanding has continued to prevail with scarcely a dissent. The analogy to ratifying conventions is not controlling; and if it were, there is no reason why a subsequent convention might not ratify after a prior one had rejected, as was done in the case of the Constitution 'tself by North Carolina. If it be established that a state may change from rejection to ratification, no good reason is perceived why it may not do so when more than one-fourth of the States have rejected.

II

The Child Labor Amendment had not lapsed by the passage of time since its submission to the States in 1924. The argument to the contrary assumes that the courts may be required to determine whether a proposed amendment has lapsed despite the belief of state legislatures that it is still pending. The argument assumes also that States which have ratified are powerless to withdraw their rati-

fications and thus protect themselves against supplementary untimely ratifications by other States. Whether ratifications may be withdrawn is a question still unsettled. There is no need in these cases to consider the extent of the duty of the courts or the power of States to withdraw their ratifications, since it plainly appears that the Child Labor Amendment has retained its vitality. Congress deliberately declined to place a time limit on ratification in the Amendment. In 1931, seven years after its submission, it was ratified by the sixth State. This ratification was clearly timely. In 1933, the next year during which state legislatures regularly met, there was a ferment of activity in relation to the Amendment, which has continued to the present time. That it has not lapsed has been the understanding of Congress, the state legislatures, and representative non-official organizations.

III

The constitutional questions are properly before this Court. In the Kentucky case the petitioners are public officers performing a Federal function and are seeking to sustain the validity of the act of ratification. Decisions holding that public officers may not invoke the jurisdiction of this Court in their official capacity to challenge the constitutionality of state action are therefore inapplicable. The case is not academic. To prevent official notice

of the action of the State from reaching the Secretary of State of the United States is an interference with the amending process both as a matter of law and of fact. Official notice from the State is conclusive on the Secretary with regard to the procedural validity of the ratification, and the proclamation of the Secretary is conclusive on the courts in that regard. As a practical matter, moreover, the orderly receipt of official notice tends to avoid confusion and uncertainty. The historic background of the provision for official notice, first enacted in 1818, indicates the importance of the provision. The question of the validity of ratification is not premature; this Court has decided the validity of a method of ratification while an amendment was still pending before the states. In the Kansas case the petitioners are public officers attacking the validity of the claimed ratification, and consequently their standing in this Court is more questionable. It should be pointed out, however, that at least two of the petitioners appear to have been members of the state legislature at the time when the Amendment was previously rejected, and on that occasion to have cast their votes for rejection. The present suit may therefore be regarded as an effort on their part to protect and vindicate their votes as against what is asserted to be a spurious countervailing act.

ARGUMENT

I

THE RATIFICATIONS OF KANSAS AND KENTUCKY ARE NOT INVALID BY REASON OF THEIR PRIOR REJECTIONS OR THE REJECTIONS OF MORE THAN ONE FOURTH OF THE STATES

Resolutions rejecting the proposed Child Labor Amendment were passed by the legislatures of 19 States. In 8 of these States, including Kansas and Kentucky, the legislatures subsequently adopted resolutions of ratification. It is our position that these legislatures were completely at liberty to ratify the Amendment.

Any discussion of the power of a state legislature to change from a negative to an affirmative vote in relation to ratification must necessarily start with the text of Article V of the Constitution. That Article speaks in terms of ratification; the concept of rejection is not there to be found. Rejection is, therefore, an extra-constitutional concept. In our view, a vote of rejection of a proposed amendment, or an adverse vote, or a failure to pass a resolution of ratification, must all stand on the same footing and are all constitutionally neutral events.

If the concept of rejection is once imported as a constitutional limitation on further action by a legislature, it is necessary to define the concept. If it means anything, it means an affirmative vote of rejection by both houses. But logically it must

mean more. The resolution may be in form one for ratification, and the resolution may be introduced and defeated in both houses, or, as in Nebraska, introduced and defeated in a unicameral legislature. In substance this action is the same as the adoption of a resolution of rejection. Certainly the form of the resolution, whether affirmative or negative—a matter, as likely as not, quite fortuitous—should not determine whether the legislature is deemed to have rejected the propcsed Amendment. If the form of the resolution is not controlling, then many diverse forms of legislative action will have to be appraised in terms of the same concept of rejection. A resolution of rejection may be passed in one house and a resolution of ratification defeated in the other. A resolution of ratification may be defeated in one house and not reached for a vote in the other; or passed in one house and defeated in the other; or passed in one house and indefinitely postponed in the other; or passed in one house and not reached for a vote during the legislative session of the other; or passed by both houses with conditions or alterations. In each of these instances the resolution of ratification will have been lost, or have failed of passage, just as if both houses had voted it down. Must the proposed amendment be regarded in these circumstances as rejected by the legislature, so that at a subsequent session the amendment cannot again be brought up for consideration and vote? It is believed that

those who would hold a legislature to a rejection would stop short of imposing so drastic a restriction on the amending process. But if the concept of rejection is introduced as a constitutional limitation, some more precise definition of the term should be vouchsafed. The logical and practical difficulties attendant upon a definition of rejection are as serious as the importation of the concept is gratuitous.

Furthermore, the notion of rejection as precluding reconsideration by a legislature is hostile to the deliberative and representative character of the amending process. In that process, in greater measure perhaps than in any other governmental function, ample opportunity for deliberation is of first importance. Cf. Federalist, No. 43; 2 Story on the Constitution (5th ed.), p. 600. It is of the essence that there be opportunity, at least before rights have become vested, for renewed consideration in the light of fuller knowledge and further reflection. The tendency to reject what is novel may induce a rejection which on more sober second thought will appear to have been ill-considered. Or the rejection may have sprung from a misapprehension of the popular will, only subsequently made clear. There should be no vested rights in action thus regretted and renounced. Laying aside the question of lapse of time—a separate matter to be discussed hereinafter—the amending process being a function both deliberative and representative; it is an essential condition of the performance of that

function that there be allowed to a legislature a *locus poenitentiae.*

But the argument does not rest alone on the text and the spirit of Article V. It rests also on historic practice and common understanding. The proposed Child Labor Amendment has not furnished the first occasion for the ratification by state legislatures of a proposed amendment which they had previously rejected.

The Thirteenth Amendment was ratified by New Jersey after it had been voted down in both houses.[2] The ratification was subsequent, however, to the adoption of the Amendment by the requisite majority of States. But in the case of the Fourteenth Amendment such action was of critical importance. At the time of the proclamation of the Fourteenth Amendment there were 37 States, 28 thus being required to consitute a majority of three-fourths. The adoption was proclaimed by Secretary of State Seward on July 28, 1868, with 30 States enumerated as having ratified (15 Stat. 708, Appendix, *infra,* 57). Of those 30 States, 7 had previously rejected the Amendment: Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, and South Carolina.[3] Hence in only 23 of the ratifying

[2] See S. J. Res. 2, N. J. Sen. Jour. 1865, p. 472; Assembly Bill 115, N. J. Assem. Jour. 1865, p. 392; N. J. L. 1866, p. 1093.

[3] Ala. Acts 1865–1866, p. 607; Ark. Acts 1866–1867, p. 550; Fla. Laws 1866, p. 86; Ga. Laws 1866, p. 216; La. Acts 1867, p. 9; N. Car. Laws 1866–1867, p. 213; S. Car. R. & R. 1866, p. 220.

States—5 less than the requisite majority—was ratification the initial action taken. Subsequent to the proclamation of the Secretary of State, the legislatures of 3 additional States—Virginia, Mississippi, and Texas—ratified, but in each of these States there had likewise been a previous rejection.[4] An argument which would carry with it the present downfall of the Fourteenth Amendment is one to be viewed, at the very least, with skepticism.

Particularly is this true when the Congressional and executive action in relation to the adoption of the Fourteenth Amendment are recalled. On July 20, 1868, Secretary Seward issued a conditional proclamation (15 Stat. 706, Appendix C, *infra,* 53) setting forth that the Amendment had been ratified by the legislatures of 23 States and in addition "by newly constituted and newly established bodies avowing themselves to be and acting as the legislatures, respectively, of the States of Arkansas, Florida, North Carolina, South Carolina, and Alabama"; that the legislatures of 2 of the 23 States first enumerated—Ohio and New Jersey—had since passed resolutions withdrawing the consent of each to the Amendment; that it is "deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid, and therefore ineffectual for withdrawing the consent" of the 2 States; and

[4] Miss. Laws 1866–1867, p. 734; 1870, p. 631; Tex. Laws 1866, p. 266; Tex. H. J. 1870, p. 33; Tex. S. J. 1870, p. 28; Va. Acts Assembly 1866–1867, p. 508; 1867–1870, p. 3.

certifying that "if the resolutions of the legislatures of Ohio and New Jersey ratifying the aforesaid amendment are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of the legislatures of those States, which purport to withdraw the consent of said States from such ratification, then the aforesaid amendment has been ratified in the manner hereinbefore mentioned, and so has become valid, to all intents and purposes, as a part of the Constitution of the United States." It will be observed that in this carefully drawn document Secretary Seward was concerned with 2 questions: the status of the legislatures in the southern States and the authority of 2 northern States to revoke their ratifications. Evidently no doubt was entertained that if the legislatures of the southern States were lawful bodies they were empowered to ratify despite prior rejection in the same States. That the fact of the previous rejections was known to the Secretary could not be doubted, in view of the background of the Reconstruction Acts of the previous year;[5] and in fact, in his subsequent final

[5] The recalcitrance of the southern States with respect to ratification of the Fourteenth Amendment was one of the factors contributing to the enactment of the Reconstruction Acts of 1867. See 3 Thorpe, *Constitutional History of the United States* (1901), 336; 2 Curtis, *Constitutional History of the United States* (1896), pp. 380–381. The Act of March 2, 1867 (14 Stat. 429) made ratification of the Fourteenth Amendment a condition precedent to representation of the southern States in Congress. See *White* v. *Hart*, 13 Wall. 646.

proclamation, on July 28, 1868 (Appendix C, *infra*, p. 60) it is shown that official notice of the prior rejections of 3 States—North Carolina, South Carolina, and Georgia—had been formally transmitted and received.

Meanwhile the entire matter had been brought to the attention of Congress. On July 9, 1868, the Senate adopted a resolution requesting the Secretary of State to transmit a list of the States whose legislatures had ratified the proposed Fourteenth Amendments (Cong. Globe, 40th Cong., 2d Sess., p. 3857). On July 15 the President transmitted to the Senate the report of the Secretary of State in compliance with the resolution; that report listed all the ratifying States and drew special attention to the question raised by the action of Ohio and New Jersey (*idem*, p. 4070; State Archives, 14th Amendment). Three days later, on July 18, Senator Sherman introduced a resolution, which was referred to the Judiciary Committee, declaring the ratification of the Fourteenth Amendment (*idem*, p. 4197). On July 21, the day following the conditional proclamation of the Secretary, described above, the Senate unanimously adopted the Sherman resolution; and the House passed it on the same day (*idem*, pp. 4295–4296). This resolution, which was incorporated by the Secretary in his final proclamation on July 28 (Appendix, *infra*, p. 59), listed 29 States as having ratified,[6] including

[6] The ratification of Georgia occurred on the day the resolution was passed; official notice was received on July

the southern States which had previously rejected the Amendment, as well as Ohio and New Jersey. Although some doubt was expressed in Congress concerning the correctness of including the latter 2 States,[7] and of counting the southern States as members of the Union in computing the necessary majority,[8] no question was made with respect to the power of a State to ratify after a prior rejection. Thus the resolution of Congress and the action of the Secretary of State constitute legislative and executive recognition of the view here contended for, a view on which depends, as has been shown, the validity of the adoption of the Fourteenth Amendment.

This view has continued to prevail with scarcely a dissent. In 1924 Congress considered a proposal, known as the Wadsworth-Garrett Amendment, to amend Article V in several respects. The measure provided that at least one branch of a ratifying legislature must have been elected subsequent to

---

28, and Georgia was included in the proclamation of that date as the 30th ratifying State.

[7] See the argument of Senator Reverdy Johnson, Congressional Globe, 40th Cong., 2d Sess., p. 878.

[8] See the argument of Senator Sumner, *Idem.*, pp. 877–878. That only the so-called loyal States should have been counted is the position taken also by Professor Burgess in *Reconstruction and the Constitution* (1902), pp. 81, 205–206. The method adopted by Congress and Secretary Seward was, however, accepted and approved by the Court in *White* v. *Hart*, 13 Wall. 646, 649–652. See Orfield, *The Federal Amending Power*, 25 Ill. Law Review, 418, 440, Note 53.

the submission of the amendment; that a State might require that a ratification of its legislature be subject to confirmation by popular vote; and that a State might change its vote at any time before three-fourths had ratified or more than one-fourth had rejected or defeated an amendment (66 Cong. Rec., 2152–2153, 65 *id.* 4493). Only the third of these items is relevant here. In explaining the extent to which the proposal altered existing law, the authors of the resolution were explicit in stating that with respect to a change by a legislature from rejection or defeat of a pending amendment to ratification, the only alteration proposed was the termination of such power when more than one-fourth of the States rejected or defeated the amendment. The existing law was thus stated by Senator Wadsworth (65 Cong. Rec. 4492): "The legislature of a state may change from the negative to the affirmative at any time." And Congressman Garrett voiced the same understanding: "A state which has said 'no' may now change and say 'yes'" (*idem*, 2159). The proposal was designed to assure the same freedom of change to an assenting State (as to which the existing law was thought to be contrary, though not free from doubt (see *idem*, p. 2153); and to alter existing law by providing that an amendment would not be susceptible of ratification where unrevoked rejections occurred in more than one-fourth of the States. The proposal was recommitted to the Judiciary Committee in the Sen-

ate (*idem*, 5009) and did not reach a vote in the House. The importance of the episode for present purposes is that it evidences the unquestioned understanding of the present law as permitting free withdrawal by a legislature of an adverse vote on a proposed amendment.[9]

The same understanding of the power of the state legislature to change from negative to affirmative action has been expressed by students of the amending process. Judge Jameson, whose notable work on constitutional conventions has been followed by this Court in relation to another issue,[10] recounts the precedent of the Fourteenth Amendment and adds that "the right of a state legislatcre, after a negative vote has once been passed, to recede from it and ratify an amendment, is, we think, upon prin-

[9] The same position was taken by the Solicitor of the Department of State in relation to the ratification by Arkansas of the Sixteenth Amendment. Although that State was not necessary to make up a three-fourths majority, the question was considered whether it should be included in the proclamation in view of the fact that, as the Solicitor thought, it had previously rejected the amendment. Actually, the official notice received by the Department of State showed only that earlier in the session the amendment had been ratified by one house and the resolution of ratification defeated in the other. In a considered memorandum of February 20, 1913, the Solicitor advised the inclusion of the State, citing the precedent of the Fourteenth Amendment; and Arkansas was in fact included in the proclamation of the Secretary. (See State Archives, Sixteenth Amendment.) The treatment of the prior action of the State as a rejection is an illustration of the problems arising from an importation of that concept into this field.

[10] See *Dillon* v. *Gloss*, 256 U. S. 368, 375.

ciple, unquestionable" (4th Ed., p. 628). Among the considerations leading to this conclusion Judge Jameson stresses the terms of Article V and the essential similarity of the several forms of mere failure to ratify, including an affirmative vote of rejection. Others have found additional support for this view in the analogy of municipal bond elections, where it is held that an enabling act authorizes subsequent elections following an adverse vote. See 2 Watson, *Constitution of the United States* (1910), pp. 1317–1318; Cooley, *Principles of Constitutional Law* (3rd Ed.), pp. 222–223; (4th Ed.), p. 257. Whether on the basis of precedent, principle, or analogy, the same conclusion has been reached by virtually all who have discussed the question. The following may be cited: Ames, *Proposed Amendments to the Constitution* (House Doc. 353, Part II, 54th Cong., 2d Sess., pp. 299–300); Burdick, *Law of the American Constitution* (1922) 43; McLaughlin, *Constitutional History of the United States* (1936), p. 679; 1 Willoughby, *Constitutional Law of the United States* (1929), p. 593; Dodd, *Amending the Federal Constitution,* 30 Yale Law Journal, 321, 347; Garrett, *Amending the Federal Constitution,* 7 Tenn. Law Rev., 286, 294; Grinnell, *Finality of a State's Ratification of Constitutional Amendments,* 11 A. B. A. J., 192; Miller, *Amendment of the Federal Constitution,* 60 American Law Rev., 181; Orfield, *Federal Amending Power,* 25 Ill. Law Rev., 418, 439; Wheeler, *May Ratification be Repealed?* 20 Case and Comment, 548, 550. *Contra:* Cadwal-

lader, *Amending the Federal Constitution,* 60 American Law Rev., 389, 392.

All that has been said is applicable to meet the further contention that when more than one-fourth of the States have rejected an amendment it can no longer be ratified. It is not apparent why an exception should be created in such circumstances to the rule that a State may freely change from a negative to an affirmative vote. It is noteworthy that the precedent of the Fourteenth Amendment is strictly relevant on this question since 10 States out of 37 rejected the amendment before any of the 10 ratified. See pp. 14–15, *supra,* and Flack, *Adoption of the Fourteenth Amendment* (1908), ch. 4. It will also be recalled that the Wadsworth-Garrett proposal, discussed *supra,* pp. 18–20, under which the rejection or defeat of an amendment by more than one-fourth of the States would preclude further action, was deemed to effect a change in existing law in this regard. The question was again considered in the House of Representatives in 1926 with respect to the Child Labor Amendment itself. A resolution was introduced by Congressman Garrett requesting the Secretary of State to transmit to the House a statement showing what States had taken action on the amendment and what such action had been, "giving in each instance, where available, the votes in the several legislatures that have acted" (67 Cong. Rec. 1506). It was feared by supporters of the amendment that the resolution

was designed to lay a foundation for the claim that the amendment was irretrievably lost; but in response to questions the author of the resolution made clear his position that a rejecting State might subsequently ratify provided it did so within a reasonable time (*ibid.*). The resolution was adopted, and the Secretary of State transmitted the information, showing that from the records of the Department it appeared that in 4 States the amendment had been ratified, in 13 it had been affirmatively rejected, in 3 it had failed of ratification in both houses, and in 6 adverse action on it had been taken in some form by one house (67 Cong. Rec. 3801). Despite this showing that more than one-fourth of the States had affirmatively rejected the amendment, no steps were taken in the direction of declaring the proposal lapsed.[11]

Only a word need be added concerning the argument, elaborately stressed in the opinion of the Kentucky court, that since a state convention would exhaust the power of the State by rejecting an amendment, the same must be true of a state legislature. If the premise were sound, the conclusion would not necessarily follow. The premise, however, is exceedingly questionable. No good reason

[11] A resolution to amend R. S. 205 by requiring the Secretary of State to publish the rejections of state legislatures or conventions when more than one-fourth of the States had so acted was introduced at the same session and referred to the Judiciary Committee of the House, but was not reported out. 67 Cong. Rec. 396.

is perceived why a convention might not legitimately reconsider an adverse vote or why a new convention might not subsequently ratify. It is worth recalling that the Federal Constitution itself was ratified by a convention in North Carolina more than two years after an earlier convention in that State had rejected it. See Warren, *Making of the Constitution* (1928), p. 820.

It is submitted, then, that the legislatures of Kansas and Kentucky were free to ratify the Child Labor Amendment despite their prior vote of rejection and despite the prior concurrence of such rejections in more than one-fourth of the States.

II

THE RATIFICATIONS ARE NOT INVALID BY REASON OF LAPSE OF TIME SINCE SUBMISSION OF THE AMENDMENT

The second major question presented is whether the Child Labor Amendment was no longer susceptible of ratification because of the interval of time, 12 years and 7 months in the case of Kentucky and 12 years and 8 months in the case of Kansas, elapsing between submission to the States and these ratifications. The argument is, in effect, that a conclusive presumption of death arises upon the passage of such a period, a presumption akin to that arising from seven years' unexplained absence without being heard from. But the Child Labor Amendment has been heard from incessantly. If

mortality is an attribute of proposed amendments, it is clear with respect to the Child Labor Amendment that death could not have been caused by atrophy, but only by activity; and that, it is submitted, is not a basis for establishing the legal death of an amendment.

Before proceeding to consider the history of the Child Labor Amendment since its submission, two preliminary points should be made. The first is that where an amendment is submitted to Congress by state legislatures, the measurement of time in terms of years may be misleading. In all but a very few States, as the Court judicially knows, regular sessions of the legislature are held only every other year, generally in the odd-numbered years. Measurement of time in terms of regular legislative sessions tends to reduce appreciably the period elapsed between submission and ratification.

The second preliminary consideration is that the complainants in these cases, and the Kentucky court, have assumed that the question of what is a reasonable period for the adoption of an amendment is a justiciable question; to support this assumption *Dillon* v. *Gloss,* 256 U. S. 368, is cited. That case sustained the power of Congress to fix a time limit of seven years for the adoption of the Eighteenth Amendment. It was unnecessary in that case to consider whether a proposed amendment would expire with the passage of time in the absence of such a provision, and still less to con-

sider whether the courts could be required to decide that a proposed amendment had in fact expired. It is true that the opinion in the case expressed the view that an amendment cannot pend indefinitely, but nothing was said concerning the authority which would be empowered to declare that the end had come. The answer to the latter question may well turn on the answer to another: whether States which have once ratified may thereafter revoke or rescind their ratification. If they can, the danger that a few States may supplement prior ratifications of an outdated proposed amendment is largely obviated; the States that have ratified can protect themselves by rescinding. The power of the States so to do has not been judicially determined. Unless and until the power is held not to exist, much of the force is taken from the position that the courts may be required to decide whether a proposed amendment has lapsed. It is perhaps enough to say that distinguished authority can be found for the view that, until an amendment has been adopted by the ratifications of three-fourths of the States, the States do have power to rescind their ratifications.[12]

---

[12] See the communications from George Ticknor Curtis, Senator Reverdy Johnson of Maryland, and William O'Conor of New York, included in the address of C. H. Winfield in the New Jersey Senate, February 19, 1868, in support of the resolution to withdraw the assent of New Jersey to the proposed Fourteenth Amendment (privately printed, Jersey City, 1868). See also New Jersey Laws 1868, p. 1225; Congressional Globe, 40th Cong., 2d Sess., p. 878.

Decision of these questions is unnecessary in the present case, if, as we believe, it is plain that an unreasonably long period has not elapsed since the submission of the Child Labor Amendment. The importance of deliberation in the amending process has already been adverted to. (See p. 13, *supra*.) Discussing the procedure of constitutional amendment, Story said (Commentaries, 5th Ed., Vol. II, p. 600): "Time is thus allowed and ample time for deliberation, both in proposing and ratifying

---

Senator Winfield and Mr. O'Conor argued specifically that the power to withdraw a ratification was necessary to prevent adoption of an outdated amendment by the supplementary action of a few States.

New Jersey and Ohio purported to withdraw their ratifications of the Fourteenth Amendment (see p. 15, *supra*), and New York its ratification of the Fifteenth (16 Stat. 1131). The inclusion of these States, particularly the first two, in the list of ratifying States is, of course, a consideration weighing against the validity of the withdrawals; but, unlike the case of the States which first rejected and then ratified the Fourteenth Amendment, the exclusion of these States would not deprive the amendments of the necessary three-fourths majority, though in respect of the Fourteenth Amendment it would move forward the date of adoption. See Note, 30 American Law Review 894.

The following writers take the view that a ratification cannot be rescinded: Jameson, pp. 630–633; Ames, p. 229; Burdick, pp. 43–44; Watson, p. 1318; Willoughby, pp. 593–594; Dodd, 30 Yale Law Journal at 347; Garrett, 7 Tennessee Law Review at 294; Miller, 60 American Law Review at 182; Wheeler, 20 Case and Comment at 548; Compare Orfield, 25 Illinois Law Review at 439 (all *supra*, p. 21); See also Cockerell, J., dissenting in *Crawford* v. *Gilchrist*, 64 Fla. 41, 63–64.

amendments. They cannot be carried by surprise, or intrigue, or artifice. Indeed, years may elapse before a deliberate judgment may be passed upon them, unless some pressing emergency calls for instant action." [18]

The omission by Congress of a time limit for ratification of the Child Labor Amendment was not inadvertent. In the House, proposals to insert a time limit of five years and seven years, respectively, were voted down (65 Congressional Record 7289, 7293, 7294). In the Senate a proposal for a five-year limit was likewise defeated (*idem.*, p. 10141).

In the light of this background the history of the amendment in the States can be considered. We examine first the record of ratifications by sessions. One State ratified in 1924, 3 in 1925, none in 1926, one in 1927, none from 1928 through 1930, one in 1931, none in 1932, 14 in 1933, none in 1934, 4 in 1935, one in 1936, and 3 in 1937. The ratification by Colorado in 1931 occurred in the seventh year after submission. It cannot be disputed that that ratification was timely, in view of the direct holding in *Dillon* v. *Gloss, supra,* and in view of the rejection by Congress of time limits of 5 and 7 years for the Amendment. The Amendment was not dead in 1931, and it is equally clear that it

[18] In 1873 the Ohio legislature adopted a resolution ratifying the second amendment proposed in 1789, dealing with the compensation of members of Congress, which was never adopted by the requisite majority of States. See Ohio Acts, 1873, p. 409.

did not expire thereafter. In 1923, the year during which the legislatures of most States held their next regular session after the ratification of Colorado, there was a ferment of activity concerning the Amendment, resulting, as has been indicated, in 14 ratifications during the year. Since that time there has been unbroken progress in the State legislatures toward securing the necessary ratifications. At what time, then, can it be said that the amendment lapsed?

A more detailed chronology will make the point even clearer. While it is true that there was only one ratification from 1927 through 1930, and only one in 1931–1932, those years were not as barren of interest in the Amendment as those figures standing alone might suggest. The fact is that in every odd-numbered year resolutions to ratify the Amendment were introduced in a substantial number of state legislatures. In 1927 such resolutions were introduced in 11 States; in 1929, in 9 States; in 1931, in 7 States. It is significant, moreover, from the standpoint of determining whether at present a consensus of ratifying States exists, that no State which ratified has proposed to withdraw, while 8 States which affirmatively rejected have subsequently ratified. See Appendix A and B, *infra*.[13a] Indeed, two of the earliest States to rat-

[13a] Indiana, Kansas, Kentucky, Maine, Minnesota, New Hampshire, Pennsylvania, Utah. In addition, Oklahoma, Washington, and West Virginia ratified after one house voted to reject and the other voted against ratification.

ify, Arkansas and California, memorialized the President in 1937, through their legislatures, to continue his efforts for ratification. Ark. L. 1937, p. 1422; Calif. L. 1937, p. 2696.

Not only the States, but the National Government as well, have unhesitatingly treated the Amendment as still pending. At the last session of Congress the Interstate Commerce Committee of the Senate, reporting favorably the Wheeler Bill (S. 2226) to regulate the products of child labor in interstate commerce, made the following statement in regard to the pending Amendment (Senate Report 726, 75th Cong., 1st Sess.):

> With but one or two exceptions neither those appearing before the committee nor the members of the Committee on Interstate Commerce expressed any feeling or fear that the enactment of child-labor legislation at this time would retard the adoption of the pending child-labor amendment. And neither the authors of the bill nor the Committee on Interstate Commerce feel that passage and approval of child-labor legislation reported at this time would eliminate the necessity for adoption of the child-labor amendment.

At the same session the Committee on the Judiciary, reporting favorably the resolution of Senator Vandenberg for a new amendment dealing with child labor, made it clear that the pending Amendment had not lapsed, but merely that in the opinion of the Committee it was not likely to be ratified by

the necessary majority of States (Senate Report 788, 75th Cong., 1st sess.). On January 8, 1937, the President addressed a letter to the Governor of each of the 19 nonratifying States whose legislatures were to meet in that year, urging them to press for ratification (New York Times, January 9, 1937, p. 5). Two days later former President Hoover issued a statement in which, emphasizing the continued need for the Amendment, he declared that it "should be passed now" (*idem*, January 11, 1937, p. 6).

It has not been suggested, nor could it be, that the conditions giving rise to the Amendment have been eliminated. The prevalence of child labor, the diversity of state laws and the disparity in their administration, and the resulting competitive inequities, are facts that exist today as they did in 1924. Cf. U. S. Dept. of Labor, Children's Bureau, *Child Labor—Facts and Figures* (Publ. No. 197, 1930, rev. ed. 1933); *id., Summary of State Laws Affecting the Employment of Minors In Factories and Stores* (July 1938); *Trend of Child Labor 1927 to 1936* (Monthly Labor Rev., U. S. Dept. of Labor, Dec. 1937). It is not necessary here to detail these facts. A concise statement of them was made in 1935 by Mr. Charles C. Burlingham, Chairman o the National Non-Partisan Committee for Ratification of the Federal Child Labor Amendment. 21 A. B. A. J. 214. See also *White House Conference on Child Health and Protection,* Report of Subcommittee on Child Labor (1932), p. 31; *Recent*

Social Trends in the United States (Report of the President's Committee, 1933), Vol. 2, pp. 777–779. The authors of a recent study of child labor in the United States declare (Lumpkin and Douglas, *Child Workers in America*, 1937, p. IX): "The Child Labor Amendment, then, is the obvious step. No substitutes will do."[14]

A large number of other sources testify to the continued public support of the Amendment as a means of dealing with the persistent problem of child labor. Of particular interest is the record of the American Federation of Labor, which in every annual convention save one, from 1924 through 1937, has in the strongest terms urged ratification of the Amendment.[15] The International Association of Governmental Labor Officials has persistently urged adoption of the Amendment,[16] as has the National Conference for Labor Legislation.[17] Many

[14] See also Ireland, *Child Labor as a Relic of the Dark Ages* (1937), p. IX; "The defeat by the New York Assembly of the Child Labor Amendment, March 8, 1937, with its effect of seriously delaying the abolishment by Federal intervention of the evil of child enslavement still perpetrated in this free land, called for the completion of this book."

[15] Report of Proceedings, 1924, pp. 207–212; 1925, pp. 284–285; 1926, p. 354; 1927, pp. 93, 409; 1928, pp. 312–313; 1929, p. 314; 1931, p. 348; 1932, pp. 73, 262; 1933, pp. 171, 311–315; 1934, pp. 470, 616; 1935, pp. 143, 174–175, 485, 490, 578; 1936, pp. 138, 243–244, 669; 1937, pp. 173, 503.

[16] Proceedings of Convention, 1924, p. 121; 1925, p. 157; 1933, p. 167; 1934, p. 133; 1935, p. 184; 1936, p. 130.

[17] Proceedings of First Conference, 1934, p. 78; Second Conference, 1935, pp. 69–70; Third Conference, 1936, p. 64; Fourth Conference, 1937, p. 108.

other representative organizations have steadfastly maintained their interest in, and support of, the Amendment. See National Child Labor Committee, *Handbook on Federal Child Labor Amendment* (1935). Two polls conducted by the American Institute of Public Opinion have dealt with the proposed Child Labor Amendment. The first, reported in May 1936, showed that of more than 130,000 voters representing a cross-section of public opinion, sixty-one percent favored the amendment; in forty-five States the vote was favorable.[18] Nine months later, in February 1937, a second poll showed 76 percent favoring the Amendment; in every State the vote was favorable.[19] Quite apart from the striking results of these polls, the very fact that they were conducted is indicative of the present vitality of the proposed Amendment.

If it be assumed that the courts can be asked to declare a proposed amendemnt lapsed at a time when States have believed it to be pending, there is at least no basis, in the light of all the foregoing facts, for reaching a conclusion contrary to that of the State legislatures with respect t the Child Labor Amendment.

III

THE JURISDICTION OF THIS COURT

The interest of the Government as amicus curiae is primarily in the decision of the constitutional

[18] Washington Post, May 24, 1936.
[19] Washington Post, February 24, 1937.

questions passed upon by the State courts. It may be appropriate, however, to state our position with respect to the question of the jurisdiction of this Court to review the decisions below. In our view the writs of certiorari were properly granted, and review of the decisions on the merits will involve no departure from established principles.

The Kentucky Case (No. 14)

It may be acknowledged at the outset that had this suit been brought in a Federal court it would properly have been dismissed on the ground that the complainants had no sufficient legal interest to challenge the constitutional validity of the ratifying resolution. Compare *Fairchild* v. *Hughes*, 258 U. S. 126.[20] The State court, however, entertained the suit and rendered judgment on the merits. That action does not present a Federal question. In the State courts the question whether a State officer may challenge the constitutionality of legislative or executive action is a matter of State practice to be decided by the courts of the State. See *Columbus and Greenville Railway Co.* v. *Miller*, 283 U. S. 96, 99, and cases there cited. The only question

[20] In *State of Ohio* v. *Cox, Governor*, 257 Fed. 334 (S. D. Ohio), the court dismissed a bill for an injunction to restrain the Governor from transmitting the proposed Eighteenth Amendment to the legislature. And in *Clements* v. *Roberts*, 144 Tenn. 129, 230 S. W. 30, the Supreme Court of Tennessee denied an injunction to restrain the Governor and other state officers from certifying and transmitting a resolution of ratification of the Nineteenth Amendment. Both of these decisions were rested chiefly on the doctrine of separation of powers.

before this Court is whether the petition for certiorari was a proper invocation of this Court's jurisdiction. In our view it was.

There can be no doubt that the decision of the Kentucky Court of Appeals falls within the terms of Section 237 (b) of the Judicial Code, as a final judgment in a cause "where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution * * * or commission held or authority exercised under, the United States." The defendants, petitioners here, claimed the privilege of carrying out their functions as public officers pursuant to an authority exercised under Article V of the Constitution. The validity of that exercise of authority was assailed by complainants. That the authority was exercised "under the United States" does not admit of dispute. This Court said, in *Leser* v. *Garnett*, 258 U. S. 130, 137: "But the function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution; * * *." Statutory jurisdiction in this Court, then, clearly exists.

Thus the essential question is not strictly jurisdictional but relates rather to the standing of the petitioners to assert their claims in this Court. It is true that in a familiar series of cases this Court has hold that the interest of a party invoking its

jurisdiction and raising a question of constitutionality must be a personal, not an official, interest. *Smith* v. *Indiana*, 191 U. S. 138; *Braxton County Court* v. *West Virginia*, 208 U. S. 192; *Marshall* v. *Dye*, 231 U. S. 250; *Stewart* v. *Kansas City*, 239 U. S. 14. Those cases, like that at bar, arose in state courts, and the appellants in this Court were state officers. But those cases have no application here. The controlling factor in each of them was that the state officer was seeking to attack the validity of state action, not to support it. In the *Smith*, *Braxton County Court*, and *Stewart* cases, the appellant in this Court challenged the validity of a state statute, while in the *Marshall* case the appellant challenged the validity of the judgment of the state court itself under the constitutional guarantee of a republican form of government. In the case at bar, in contrast, the petitioners are seeking to sustain state action, and the state court has declared it invalid. In these circumstances there is no reason to deny standing to the petitioners in this Court. Similar cases have been entertained in recent terms with no question as to the standing of the public officers, whether Federal or state, to seek review: e. g., cases from state courts: *Kelly* v. *Washington ex rel. Foss Co.*, 302 U. S. 1; *Morehead* v. *New York ex rel. Tipaldo*, 298 U. S. 587; cases from three-judge Federal district courts: *Coverdale* v. *Arkansas-Louisiana Pipe Line Co.*, 303 U. S. 604; *Carmichael* v. *Southern Coal and Coke Co.*, 301

U. S. 495; *James* v. *Dravo Contracting Co.*, 302 U. S. 134; *South Carolina Highway Department* v. *Barnwell Bros.*, 303 U. S. 177; cases from circuit courts of appeals: *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *Hurley* v. *Kincaid*, 285 U. S. 95. It seems unnecessary to discuss the point at greater length, particularly in view of the fact that it appears to have been settled by this Court in *Boynton, Attorney General* v. *Hutchinson Gas Co.*, 291 U. S. 656 (subsequently dismissed because of defects with respect to summons and severance, 292 U. S. 601). In that case, oral argument was ordered and had on the question of the standing of the Attorney General of a State to seek review of a state decision holding a state act unconstitutional. After argument and the submission of written briefs on the question of the standing of the petitioner a writ of certiorari was granted.[21]

As statutory jurisdiction exists, and the petitioners have standing to support the validity of the legislative action, the only remaining question is whether the cause is moot or academic. It is true that the action originally sought to be enjoined—the transmittal of the resolution to the Secretary of State of the United States—had already been performed. Nevertheless the prayer of the complainants was appropriately amended to ask that the Governor be required to revoke the notification.

[21] The case is discussed in Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States* (1936), Sec. 271, p. 498.

The court declined to issue a writ of the kind requested, on grounds of comity, but framed its decree to achieve the same end by causing it to be certified to the Secretary of State by the clerk of the lower court. It is not necessary, in order that there be an actual controversy, that process be issued against the defendant. *Fidelity National Bank* v. *Swope,* 274 U. S. 123. This Court itself has on occasion refrained from issuing mandatory process in the belief that its opinion would induce the action sought to be compelled. E. g., *Ex parte Northern Pacific Railway Co.,* 280 U. S. 142, 144; cf. 280 U. S. 530. The notice sent by the Clerk to the Secretary of State in the case at bar has served effectively to accomplish the purpose of the suit.

That purpose was not an academic one, either in law or in fact. It is true that the adoption of an amendment does not depend upon the proclamation of the Secretary of State or upon receipt by him of official notices of the ratifying resolutions. The adoption of an amendment occurs when the last of the necessary majority of States has acted. *Dillon* v. *Gloss,* 256 U. S. 368. But the notification to the Secretary of State is not in law an act of supererogation. Once official notice has been received by the Secretary that a state legislature has ratified a proposed amendment, the Secretary is precluded from going behind the notification to examine whether the procedural requisites obtaining in the State have been satisfied. *Leser* v. *Garnett,* 258 U. S. 130, 137. And the proclamation of the Sec-

retary, based on such official notice, is binding in this regard on the courts. *Ibid.*

Moreover, the statutory provision regarding official notice to the Secretary has genuine practical importance. It is designed to avoid uncertainty and confusion in the process of ratification. The provision was originally the Act of April 20, 1818, c. 80, Sec. 2, 3 Stat. 439, and was carried into the Revised Statutes as Section 205 (5 U. S. C. Sec. 160). That provision had an illuminating background. Shortly before it was enacted the House of Representatives found itself in ignorance of whether the so-called "title of nobility Amendment" proposed in 1810 had actually been ratified by three-fourths of the States. On February 6, 1818, the House received a report of the Secretary of State, pursuant to a House Resolution which had requested information "concerning ratification by the States of an article which is printed in some late copies of the Constitution, but which, it appears, has not yet officially received the sanction of three-fourths of the States in the Union" (31 Annals of Congress 865). The report of the Secretary showed that the article had been ratified by 12 States and rejected by 2, and that the action of 2 States had not been ascertained. The Secretary had addressed letters to the Governors of the latter two States but had not yet received replies (*ibid.*).[22] It was in the light of this eminently

[22] The "title of nobility Amendment" was likewise the subject of confusion in the States. In 1827 South Carolina adopted a resolution appointing a committee to ascertain

MICROCARD

TRADE MARK ®

22

MICROCARD® EDITIONS, INC.
PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

practical situation that the Act of 1818 was enacted. The duty of the Secretary of State to declare the adoption of an amendment when "official notice" has been received from the requisite number of States implies a correlative duty on the part of the appropriate state officers to transmit official notice to the Secretary. It is submitted that the courts can not be asked to regard that duty as trivial or meaningless.

The failure of certain States to furnish official notice of their ratification of the Eleventh Amendment caused a misunderstanding as to the effective date of that Amendment to persist until 1935. On April 15, 1935, the Department of State was able to explain and correct the long-standing error, in the following statement:

> President John Adams in a message to Congress of January 8, 1798, announced that the Eleventh Amendment to the Constitution had been adopted by three-fourths of

---

whether that State had ever acted upon, and accepted or rejected, the amendment, "it appearing to be uncertain whether it has been accepted by a constitutional majority of the States * * *" (S. C. R. and R. 1827, p. 66). See also *idem.*, 1829, p. 27, for a subsequent resolution of the same tenor. As late as 1841 the Indiana House adopted a resolution directing a committee to inquire why it was that the "title of nobility Amendment" "was incorporated in the last revision of the laws of Indiana as being a part of said Constitution; * * *" (H. J. 1841, pp. 292, 367).

For the information contained in this footnote, and for other valuable assistance in assembling historical data, we are indebted to Professor W. S. Jenkins, of the University of North Carolina.

the States and "may now be declared to be a part of the Constitution."

In the absence of more specific statement, and also (and particularly) because of the incompleteness of the records for the period in the Department of State, it has heretofore been generally supposed by the writers and other authorities on constitutional history that the effective date of the Eleventh Amendment was either the date of the presidential message, January 8, 1798, or some date shortly prior thereto.

As a result of recent research in the Department, it is now established that the Eleventh Amendment became part of the Constitution on February 7, 1795, for on that date it had been ratified by twelve States as follows:

* * * * *

The reason why it was not known at the seat of Government (then Philadelphia) until nearly three years thereafter that the Eleventh Amendment had been ratified by the necessary number of States was that some of the State authorities failed to give notice of the action of their Legislatures. * * * (Dept. of State Press Release, April 15, 1938).

It is true that knowledge of the ratifications of state legislatures may be more easily acquired at the present day than a century ago. But it must be remembered that in the view taken by the complainants and the court below, it is necessary to know not merely the acts of ratification but also acts of rejection. The latter are, of course, less easily as-

certained, particularly if the concept of rejection includes the defeat of a resolution of ratification in the legislature. It would hardly be suggested that interference with official notice of rejection would constitute an actual controversy but that interference with official notice of ratification does not.

We therefore submit that an interference with notification to the Secretary of State is substantial, both as a matter of law and as a matter of fact, and that the case does not present a merely academic question.

Indeed if there be any difficulty in this regard it would seem to be presented by the possibility that the Court should declare the interference with the function of the state officers to be in itself unconstitutional, apart from the validity of the ratifying resolution. It is believed, however, that the Court need not go so far. Whether the suit of the complainants and the judgment of the state court are an invalid interference with the amending process depends upon whether the purported ratification is a genuine or a spurious act under Article V. Pertinent in this connection is the decision in *Hawke* v. *Smith, No. 2,* 253 U. S. 231. That case involved the Nineteenth Amendment, which was then pending prior to adoption. The plaintiff sued in a state court to enjoin the Secretary of State of Ohio from expending money in printing ballots for the submission of a referendum on the question of the ratification which the state legislature had already made of the proposed

amendment. The Supreme Court of Ohio held that the referendum was proper and denied relief. On appeal to this Court the decree was reversed, the Court holding that the method of referendum was inadmissible under Article V. It will be observed that the plaintiff in that case was seeking to restrain what the State conceived to be a proper exercise of the amending function. This Court might therefore have held the suit to be an unlawful interference with the amending process, raising as it did a Federal question with respect to that process that it was not then necessary to decide. The question of the validity of the method of referendum would not become acute unless a double contingency occurred: a result in the referendum contrary to the action of the state legislature, and the ratification of the pending amendment by three-fourths of the States with Ohio as a necessary component of the three-fourths majority. Instead of holding that the suit was an improper interference with the amending process, or that the constitutional question was prematurely raised, this Court entertained the appeal and determined the merits. It seems to us that the case at bar presents less serious procedural issues than were present in *Hawke* v. *Smith, No. 2.*

The Kansas Case (No. 14)

The fact that in the Kansas case the petitioners in this Court are seeking to challenge the validity of the action of the legislature makes this case a more doubtful one than the Kentucky case from the point

of view of the standing to raise the constitutional issues. We wish to suggest, however, a possible ground upon which it may be determined that the case is properly here. At least two of the petitioners appear to have been members of the legislature of Kansas in 1925 when the amendment was rejected, and to have voted on that occasion for rejection. Their present suit may thus be regarded as an effort to vindicate and protect their votes against what is asserted to be an illegitimate countervailing vote in 1937. In this aspect their standing is akin to that of the complainants in *Leser* v. *Garnett*, 258 U. S. 130, who were held entitled as voters to maintain a suit to strike from the registration lists the names of women voters which they contended were placed on the lists pursuant to an invalid constitutional amendment. The right to vindicate and protect one's vote is a right which has been given broad scope in the decisions of this Court. Cf. *Smiley* v. *Holm*, 285 U. S. 355; *Nixon* v. *Herndon*, 273 U. S. 536; *Leser* v. *Garnett*, *supra*.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Supreme Court of Kansas should be affirmed and that of the Court of Errors of Kentucky should be reversed.

ROBERT H. JACKSON,
Solicitor General.

PAUL A. FREUND,
Special Assistant to the Attorney General.

OCTOBER 1938.

APPENDIX A

Chart Showing Proceedings in State Legislatures on Child Labor Amendment (by Sessions)

SYMBOLS

* Ratification.
R Resolution (or bill) for ratification; referred to committee, or reported out, or indefinitely postponed, or tabled, etc.
Rp1 Resolution (or bill) for ratification passed in one House.
Rd1 Resolution (or bill) for ratification defeated in one House.
Rd2 Resolution (or bill) for ratification defeated in both Houses.
J. Resolution (or bill) for rejection.
Jp1 Resolution (or bill) for rejection passed one House.
Jp2 Resolution (or bill) for rejection passed both Houses.
Jd1 Resolution (or bill) for rejection defeated in one House.
Jd2 Resolution (or bill) for rejection defeated in both Houses.
Ref Resolution (or bill) for referendum.

State	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937
Alabama										R		R		
Arizona		(*)												
Arkansas	(*)													
California		(*)												
Colorado		R		R		R		(*)						
Connecticut		Rd2				R						Rd2		Rp1 Rd1
Delaware		Rd2										Rd1	Rd1	
Florida		Jp2								Rd1				R.
Georgia		Jp2		R								R		R.
Idaho		Rd1										(*)		
Illinois		Ref								(*)				
Indiana		Jp2										(*)		
Iowa		R								(*)				
Kansas		Jp2				R				Rp1 Rd1		R		(*).
Kentucky			Jp2								R		(*)	
Louisiana	Rd1										Rd1		Rd1	
Maine		Jp2 Rd1								(*)				
Maryland				Jp2						R		Rp1		Rd1.
Massachusetts	Ref	Jp2								R	J	R		Rd2.
Michigan		Jp1 R								(*)				
Minnesota		Jp2								(*)				
Mississippi											Rp1		R	
Missouri		Jp2								Rp1		R		Rd1.
Montana		Rp1		(*)										
Nebraska				Rd1		Rp1						Rd1		R.
Nevada		Rd1		Rp1		R						Rp1 Rd1		(*)
New Hampshire		Jp2								(*)				
New Jersey		Ref p2							R	(*)				
New Mexico		Ref p2										(?)		(*).
New York		Ref p1	R	R	R			R		R	R	Rd1	R	Rp1 Rd1.
North Carolina	Jp2											Rd1		R.
North Dakota		Rd1								(*)				
Ohio		Rd1						R		(*)				
Oklahoma		Rd1 Jp1		R						(*)				
Oregon		Rd1 Ref p1				R		Rd1		(*)				
Pennsylvania		Jp2		Ref p2 (vetoed)		Ref				(*)				
Rhode Island	R									R	R	R	R	
South Carolina		Jp2									R	R		Ref p1.
South Dakota		Rd2								Rd1		Rd1		R.
Tennessee		Jp2								Rd1				Rd1.
Texas		Jp2		R						Rd1	Rp1 Rd1	R		Rp1 Rd1.
Utah		Jp2		Rd1		R				Rp1 Rd		(*)		
Vermont		Jp2										Rd1		
Virginia			Jp2								Rd1			
Washington		Rd1 Jp1				R tie		R		(*)				
West Virginia		Rd1 Jp1												

Rd2 Resolution (or bill) for ratification defeated in both Houses.

Ref Resolution (or bill) for referendum.

State	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937
Alabama										R		R		
Arizona		(*)												
Arkansas	(*)													
California		(*)												
Colorado		R		R		R		(*)						
Connecticut		Rd2				R						Rd2		Rp1 Rd1.
Delaware		Rd2										Rd1	Rd1	
Florida		Jp2								Rd1				R.
Georgia		Jp2		R								R		R.
Idaho		Rd1										(*)		
Illinois		Ref								(*)				
Indiana		Jp2										(*)		
Iowa		R								(*)				
Kansas		Jp2				R				Rp1 Rd1		R		(*).
Kentucky			Jp2								R		(*)	
Louisiana	Rd1										Rd1		Rd1	
Maine		Jp2 Rd1								(*)				
Maryland				Jp2						R		Rp1		Rd1.
Massachusetts	Ref	Jp2								R	J	R		Rd2.
Michigan		Jp1 R								(*)				
Minnesota		Jp2								(*)				
Mississippi											Rp1		R	
Missouri		Jp2								Rp1		R		Rd1.
Montana		Rp1		(*)										
Nebraska				Rd1		Rp1						Rd1		R
Nevada		Rd1		Rp1		R						Rp1 Rd1		(*).
New Hampshire		Jp2								(*)				
New Jersey		Ref p2							R	(*)				
New Mexico		Ref p2										(?)		(*).
New York		Ref p1	R	R	R			R		R	R	Rd1	R	Rp1 Rd1.
North Carolina	Jp2											Rd1		R.
North Dakota		Rd1								(*)				
Ohio		Rd1						R		(*)				
Oklahoma		Rd1 Jp1		R						(*)				
Oregon		Rd1 Ref p1				R		Rd1		(*)				
Pennsylvania		Jp2		Ref p2 (vetoed)		Ref				(*)				
Rhode Island	R									R	R	R	R	
South Carolina		Jp2									R	R		Ref p1.
South Dakota		Rd2								Rd1		Rd1		R.
Tennessee		Jp2								Rd1				Rd1.
Texas		Jp2		R						Rd1	Rp1 Rd1	R		Rp1 Rd1.
Utah		Jp2		Rd1		R				Rp1 Rd1		(*)		
Vermont		Jp2										Rd1		
Virginia			Jp2								Rd1			
Washington		Rd1 Jp1				R tie 1		R		(*)				
West Virginia		Rd1 Jp1		R				R		(*)				
Wisconsin		(*)												
Wyoming		R		R		R		Rp1		Rp1 Ref p1		(*)		
Ratifications (annual)	1	3	0	1	0	0	0	1	0	14	0	4	1	3.
Ratifications (cumulative)	1	4	4	5	5	5	5	6	6	20	20	24	25	28.

APPENDIX B *

TABLE SHOWING PROCEEDINGS IN STATE LEGISLATURES ON CHILD LABOR AMENDMENT

Symbols: R=Resolution (or bill) to ratify
J=Resolution (or bill) to reject

Alabama:
1933. H. J. pp. 735, 828 (R.). Reported favorably, p. 935.
1935. H. J. p. 2927 (R.).

Arizona:
1925. Acts, pp. 439–440 (Ratified).

Arkansas:
1924. Acts, pp. 78–79 (Ratified).
1925. S. J. p. 200 (Resol. expressing regret at ratification; adopted).
H. J. p. 372 (*Id.* tabled).

California:
1925. Acts, p. 1019 (Ratified).

Colorado:
1925. H. J. p. 1303 (R. Indefinitely postponed).
S. J. p. 1125 (R. Indefinitely postponed).
1927. H. J. p. 376 (R. Without recommendation).
S. J. p. 1137 (R. Indefinitely postponed).
1929. H. J. p. 1157 (R. Favorable).
1931. Acts, p. 827 (Ratified).

Connecticut:
1925. H. J. p. 431 (R. defeated).
S. J. p. 379 (R. defeated).
1929. H. J. p. 564 (R. to committee; leave to withdraw).
1935. H. J. p. 273 (R.). *Id.* p. 855 (R. defeated).
S. J. p. 76 (R.). *Id.* p. 843 (R. defeated).
1937. H. J. p. 621 (R. defeated). *Id.* p. 760 (R. tabled).
S. J. p. 626 (R. passed).

* In compiling this table we have utilized the researches of Prof. W. S. Jenkins, of the University of North Carolina.

Delaware:
1925. H. J. p. 126 (R. defeated).
S. J. p. 90 (R. returned to House). *Id.* p. 109 (R. defeated). *Id.* pp. 70, 71 (J. to committee).
1935. H. J. 632 (R. defeated).
1937. H. J. p. 838 (R. defeated; reconsidered).

Florida:
1925. Acts, p. 575 (Rejected).
1933. S. J. p. 439 (R. reported adversely).
1935. H. J. p. 1465 (R. tabled).
1937. H. J. p. 124 (R. tabled).

Georgia:
1924. Acts, p. 827 (Rejected).
1927. H. J. p. 426 (R. read second time).
1935. H. J. p. 2482 (R. tabled).
1937. H. J. p. 2478 (R. reported favorably and read second time).

Idaho:
1925. H. J. p. 194 (R. defeated).
1935. Acts, p. 372 (Ratified).

Illinois:
1925. H. J. p. 923 (Ref. tabled).
S. J. p. 778 (Message referred to committee).
1933. Acts, p. 1126 (Ratified).

Indiana:
1925. H. J. p. 801 (Rejected).
S. J. p. 325 (Indefinitely postponed and rejected).
1935. Acts, p. 1555 (Ratified).

Iowa:
1925. H. J. p. 591 (R. Indefinitely postponed).
1923. H. J. p. 875 (R. Indefinitely postponed).
S. J. p. 619 (R. to committee).
1933, extra sess. Acts, p. 345 (Ratified).

Kansas:
1925. Acts, p. 248 (Rejected).
1929. S. J. p. 303 (R. reported adversely).
1933. H. J. p. 352 (R. reported favorably).
1933. Spec. sess., H. J. p. 60 (R. adopted).
S. J. p. 71 (R. defeated).
1935. H. J. pp. 180, 210 (R. reported unfavorably; R. to committee).
1937. S. C. Res. 3 (Ratified).

Kentucky:
1926. Acts, p. 1014 (Rejected).
1934. H. J. p. 1863 (R. referred).
S. J. p. 354 (R. to committee).
1936. Extra. Acts, p. 186 (Ratified).

Louisiana:
1924. H. J. p. 672 (R. defeated).
1934. H. J. p. 1094 (R. defeated).
1936. H. J. p. 410 (R. defeated).

Maine:
1925. H. J. p. 742 (J. passed).
S. J. p. 643 (J. passed); *id.* p. 622 (R. defeated).
1933. Acts, p. 169 (Ratified).

Maryland:
1927. Acts, p. 1642 (Rejected).
1933. H. J. p. 60 (R. to committee).
1935. H. J. p. 502 (R. reported adversely); *id.* p. 677 (S. J. R. to committee).
S. J. p. 437 (R. passed).
1937. H. J. p. 1512 (R. defeated).

Massachusetts:
1924. Acts, p. 565 (Referendum).
1925. H. J. p. 349 (Rejected).
S. J. p. 521 (Rejected).
1933. H. J. p. 750 (Pet. for ratif. to committee).
1934. H. J. p. 314 (Pet. for resolution declaring amendment no longer before General Court; leave to withdraw).
1935. (Pet. for ratif. Leave to withdraw).
1937. H. J. p. 91 (R. defeated).
S. J. p. 627 (R. defeated).

Michigan:
1925. H. J. p. 185 (J. passed).
S. J. p. 162 (J. returned to House, not passed).
Id. p. 103 (R. to committee).
1933. S. C. R. 45 (Ratified).

Minnesota:
1925. Acts, p. 787 (Rejected).
1933. H. J. p. 532 (R. passed).
S. J. p. 1451 (R. reported favorably; to calendar).
1933. Extra sess. Acts, p. 116 (Ratified).

Mississippi:
1934. H. J. p. 462 (R. reported adversely). *Id.* pp. 463, 496 (S. C. R. reported adversely).
S. J. p. 485 (R. passed).
1936. S. J. p. 430 (R. reported adversely).

Missouri:
1925. H. J. p. 704 (Rejected).
S. J. p. 777 (Rejected).
1933. H. J. p. 142 (R. passed).
1935. H. J. p. 618 (R. reported adversely).
S. J. p. 1147 (R. reported adversely).
1937. H. J. p. 766 (R. defeated).

Montana:
1925. H. J. p. 140 (R. passed).
S. J. p. 214 (R. tabled).
1927. Acts, p. 588 (Ratified).

Nebraska:
1925. H. J. p. 39 (Message referred).
1927. H. J. p. 1450 (R. defeated).
1929. H. J. p. 1278 (R. Indefinitely postponed).
S. J. p. 1089 (R. passed).
1935. H. J. p. 993 (R. defeated).
1937. H. J. p. 992 (R. Indefinitely postponed).

Nevada:
1925. H. J. p. 45 (R. defeated).
1927. H. J. p. 90 (R. passed).
S. J. p. 70 (R. Indefinitely postponed).
1929. H. J. p. 283 (R. to committee; discharge defeated).
1935. H. J. p. 33 (R. passed).
S. J. p. 83 (R. defeated). *Id.* p. 88 (Reconsideration lost).
1937. Acts, p. 548 (Ratified).

New Hampshire:
1925. H. J. p. 402 (Rejected).
S. J. p. 157 (Rejected).
1933. H. J. p. 757 (R. passed).
S. J. p. 394 (R. passed). (Ratified.)

New Jersey:

1925. H. J. p. 344 (R. to committee). *Id.* p. 901 (Referendum voted).
S. J. p. 21 (R. to committee). *Id.* p. 109 (Referendum voted).
1932. H. J. p. 113 (R. to committee).
1933. H. J. p. 1089 (R. passed).
S. J. p. 868 (R. passed). (Ratified.)

New Mexico:

1925. H. J. p. 60 (R. passed). *Id.* p. 106 (Referendum voted).
S. J. pp. 41, 55 (R. to committee). *Id.* p. 52 (Referendum voted).
1937. H. J. R. 4 (Ratified).

New York:

1925. H. J. p. 117 (Referendum).
S. J. p. 265 (R. to committee). *Id.* p. 498 (Referendum approved).
1926. H. J. p. 89 (R. to committee).
1927. H. J. p. 362 (R. to committee).
1928. H. J. p. 39 (R. to committee).
1931. H. J. p. 68 (R. to committee).
1933. H. J. p. 2464 (R. to committee; discharge defeated).
1933. Extra sess. H. J. p. 39 (R. to committee).
S. J. p. 70 (R. to committee).
1934. H. J. pp. 55, 62 (R. to committee).
S. J. p. 21 (R. to committee).
1935. H. J. p. 3398 (R. defeated).
S. J. p. 14 (R. to committee).
1936. H. J. p. 35 (R. to committee).
S. J. p. 223 (R. to committee).
1937. H. J. p. 868 (R. defeated).
S. J. p. 131 (R. passed).

North Carolina:

1924. Extra sess. Acts, p. 184 (Rejected).
1935. H. J. p. 351 (R. defeated).
1937. H. J. p. 114 (R. tabled).
S. J. p. 207 (R. reported adversely).

North Dakota:
1925. S. J. p. 152 (R. defeated).
1933. Acts, p. 429 (Ratified).

Ohio:
1925. H. J. p. 107 (R. defeated).
S. J. p. 68 (R. to committee).
1931. S. J. p. 540 (R. reported favorably).
1933. Acts, p. 675 (Ratified).
1937. S. J. p. 394 (Resol. expressing oppos. to amend. to committee).

Oklahoma:
1925. H. J. p. 255 (R. defeated).
S. J. p. 330 (J. passed).
1927. S. J. p. 1337 (R. reported favorably).
1933. Acts, p. 498 (Ratified).

Oregon:
1925. H. J. p. 298 (R. to committee); *id.* p. 394 (Ref. passed).
S. J. p. 187 (R. defeated); *ibid.* (Ref. defeated).
1929. H. J. p. 297 (R. to committee).
1931. H. J. p. 309 (R. defeated).
1933. Acts, p. 894 (Ratified).

Pennsylvania:
1925. Acts, p. 840 (Rejected).
1927. H. J. p. 503 (Ref. passed).
S. J. p. 174 (Ref. passed). *Id.* pp. 748–749 (Ref. vetoed).
1929. S. J. p. 689 (Ref.).
1933. H. J. p. 472 (R. to committee; discharge defeated).
1933. Extra sess. Acts, p. 104 (Ratified).

Rhode Island:
1924. H. J. p. 20 (R.).
S. J. p. 3 (R.).
1933. H. J. p. 30 (R.).
1934. H. J. p. 37 (R.).
1935. S. J. p. 24 (R.).
1936. H. J. p. 41 (R.).

South Carolina:
1925. H. J. p. 86 (J. passed).
S. J. p. 98 (J. passed).
1934. H. J. p. 307 (R. to committee).
1935. H. J. p. 1931 (R. to committee; resolving clause struck out).
1937. H. J. p. 1926 (Ref. passed).
S. J. p. 1177 (Ref.).

South Dakota:
1925. H. J. p. 307 (R. defeated).
S. J. p. 157 (R. defeated).
1933. H. J. p. 74 (R. defeated).
1935. H. J. p. 731 (R. defeated).
S. J. p. 597 (R. indef. postponed).
1937. S. J. p. 459 (R. reported without recommendation).

Tennessee:
1925. H. J. p. 342 (J. passed).
S. J. p. 263 (J. passed).
1933. H. J. p. 1005 (R. defeated).
1937. H. J. p. 1160 (R. defeated).

Texas:
1925. Acts, p. 685 (Rejected).
1927. S. J. p. 682 (R. reported adversely).
1933. H. J. p. 1194 (R. defeated).
1934, 2d call sess. H. J. p. 51 (R. passed).
S. J. p. 54 (R. defeated).
1935. H. J. p. 322 (R. reported favorably).
1937. H. J. p. 303 (R. defeated).
S. J. p. 96 (R. passed).

Utah:
1925. Acts, p. 299 (Rejected).
1927. H. J. p. 253 (R. defeated).
1929. H. J. p. 666 (R. reported adversely).
1933. Spec. sess. H. J. p. 235 (R. passed).
S. J. p. 212 (R. defeated).
1935. Acts, p. 255 (Ratified).

Vermont:
1925. H. J. p. 203 (J. passed).
S. J. p. 211 (J. passed).
1935. H. J. p. 229 (R. defeated).

Virginia:
1926. Acts, p. 3 (Rejected).
1934. S. J. p. 362 (R. defeated).

Washington:
1925. H. J. p. 68 (R. defeated); *id.* p. 69 (J. tabled).
S. J. p. 91 (R. tabled); *id.* p. 90 (J. passed).
1929. S. J. p. 299 (R. tie vote).
1931. S. J. p. 69 (R. to committee).
1933. Acts, p. 945 (Ratified).

West Virginia:
1925. H. J. p. 656 (J. passed); *ibid.* (R. out of order).
S. J. p. 586 (J. defeated); *ibid.* (R. defeated).
1927. H. J. p. 165 (R. to committee).
1931. H. J. p. 225 (R. to committee).
S. J. p. 156 (R.).
1933. Extra sess. H. J. p. 485 (R. passed).
S. J. p. 285 (R. to committee).
1933. Second extra sess., Acts, p. 581 (Ratified).

Wisconsin:
1925. Acts, p. 690 (Ratified).
1933. H. J. p. 1318 (Memorializing the legislatures to ratify; passed).
S. J. p. 1255 (*Id.*, defeated).

Wyoming:
1925. H. J. p. 51 (R. indef. postponed).
S. J. p. 44 (R. indef. postponed).
1927. S. J. p. 129 (R. indef. postponed).
1929. S. J. p. 258 (R. indef. postponed).
1931. H. J. p. 231 (R. passed).
S. J. p. 280 (R. indef. postponed).
1933. H. J. p. 86 (R. indef. postponed).
1933. Spec. sess. H. J. p. 281 (R. passed).
S. J. p. 252 (R. indef. postponed); *id.* p. 291 (Ref. passed).
1935. Acts, p. 206 (Ratified).

APPENDIX C

1.

Proclamation of July 20, 1868, Conditionally Declaring Adoption of Fourteenth Amendment

William H. Seward,
Secretary of State of the United States.

To all to whom these presents may come, greeting:

Whereas the Congress of the United States on or about the sixteenth of June, in the year one thousand eight hundred and sixty-six, passed a resolution which is in the words and figures following, to wit:

Joint Resolution Proposing an Amendment to the Constitution of the United States

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of both Houses concurring), That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said Legislatures, shall be valid as part of the Constitution, namely:

Article XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice

President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

SCHUYLER COLFAX,
Speaker of the House of Representatives.

LA FAYETTE S. FOSTER,
President of the Senate pro tempore.

Attest:

EDWD. MCPHERSON,
Clerk of the House of Representatives.

J. W. FORNEY,
Secretary of the Senate.

And whereas by the second section of the act of Congress, approved the twentieth of April, one thousand eight hundred and eighteen, entitled "An act to provide for the publication of the laws of the United States and for other purposes," it is made the duty of the Secretary of State forthwith to cause any amendment to the Constitution of the United States which has been adopted according to the provisions of the said Constitution to be published in the newspapers authorized to promulgate the laws, with his certificate specifying the States by which the same may have been adopted, and that the same has become valid to all intents and purposes, as a part of the Constitution of the United States;

And whereas neither the act just quoted from nor any other law, expressly or by conclusive implication authorizes the Secretary of State to determine and decide doubtful questions as to the authenticity of the organization of State legislatures or as to the power of any State legislature to recall a previous act or resolution of ratification of any amendment proposed to the Constitution;

And whereas it appears from official documents on file in this Department that the amendment to the Constitution of the United States proposed as aforesaid has been ratified by the legislatures of the States of Connecticut, New Hampshire, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, Rhode Island, Wisconsin, Pennsylvania, Michigan, Massachusetts, Nebraska, and Iowa;

And whereas it further appears from documents on file in this Department that the amendment to the Constitution of the United States proposed as aforesaid has also been ratified by newly constituted and newly established bodies avowing themselves to be, and acting as the legislatures respectively of the States of Arkansas, Florida, North Carolina, Louisiana, South Carolina, and Alabama;

And whereas it further appears from official documents on file in this Department that the legislatures of two of the States first above enumerated, to wit, Ohio and New Jersey, have since passed resolutions respectively withdrawing the consent of each of said States to the aforesaid amendment, and whereas it is deemed a matter of doubt

and uncertainty whether such resolutions are not irregular, invalid and therefore ineffectual for withdrawing the consent of the said two States or of either of them to the aforesaid amendment;

And whereas the whole number of States in the United States is thirty-seven, to wit: New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Vermont, Kentucky, Tennessee, Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Maine, Missouri, Arkansas, Michigan, Florida, Texas, Iowa, Wisconsin, Minnesota, California, Oregon, Kansas, West Virginia, Nevada, and Nebraska;

And whereas the twenty-three States first hereinbefore named whose legislatures have ratified the said proposed amendment, and the six States next thereafter named, as having ratified the said proposed amendment by newly constituted and established legislative bodies, together constitute three-fourths of the whole number of States in the United States;

Now, therefore, be it known that I, William H. Seward, Secretary of State of the United States, by virtue and in pursuance of the second section of the Act of Congress approved the twentieth of April, eighteen hundred and eighteen, hereinbefore cited, do hereby certify that, if the resolutions of the legislatures of Ohio and New Jersey ratifying the aforesaid amendment are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of the legislatures of those States which purport to withdraw the consent of said States from such ratification, then the aforesaid amendment has been ratified in the manner hereinbefore mentioned and so has become valid to all intents and purposes as a part of the Constitution of the United States.

In testimony whereof, I have hereunto set my hand and caused the seal of the Department of State to be affixed.

Done at the City of Washington this twentieth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-third.

[SEAL] WILLIAM H. SEWARD,
Secretary of State.

2.

Proclamation of July 28, 1868, Declaring Adoption of Fourteenth Amendment

William H. Seward,
Secretary of State of the United States.

To all to whom these presents may come, Greeting:

Whereas by an Act of Congress passed on the twentieth of April, one thousand eight hundred and eighteen, entitled "An Act to provide for the publication of the laws of the United States and for other purposes" it is declared, that whenever official notice shall have been received at the Department of State that any amendment which heretofore has been and hereafter may be proposed to the Constitution of the United States has been adopted according to the provisions of the Constitution, it shall be the duty of the said Secretary of State forthwith to cause the said amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid to all intents and purposes as a part of the Constitution of the United States.

And whereas the Congress of the United States, on or about the sixteenth day of June, one thousand eight hundred and sixty-six, submitted to the legislatures of the several States a proposed amendment to the Constitution in the following words, to wit:

Joint Resolution proposing an Amendment to the Constitution of the United States

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of both Houses concurring), That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which when ratified by three-fourths of said Legislatures, shall be valid as part of the Constitution, namely:

ARTICLE XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But

neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LA FAYETTE S. FOSTER,
President of the Senate pro tempore.

Attest:

EDWD. MCPHERSON,
Clerk of the House of Representatives.
J. W. FORNEY,
Secretary of the Senate.

And whereas the Senate and House of Representatives of the Congress of the United States on the twenty-first day of July, one thousand eight hundred and sixty-eight, adopted and transmitted to the Department of State a concurrent resolution, which concurrent resolution is in the words and figures following, to wit:

In Senate of the United States, July 21, 1868

Whereas the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, West Virginia, Kansas, Missouri, Indiana, Ohio, Illinois, Minnesota, New York, Wisconsin, Pennsylvania, Rhode Island, Michigan, Nevada, New Hampshire, Massachusetts, Nebraska, Maine, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two thirds of each House of the thirty-ninth Congress; therefore

Resolved by the Senate (the House of Representatives concurring) that said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it

shall be duly promulgated as such by the Secretary of State.

Attest:

GEO. C. GORHAM,
Secretary.

In the House of Representatives, July 21, 1868

Resolved, That the House of Representatives concur in the foregoing Concurrent Resolution of the Senate declaring the ratification of the fourteenth article of amendment of the Constitution of the United States.

Attest: EDWD. MCPHERSON,
Clerk.

And whereas official notice has been received at the Department of State that the legislatures of the several States next hereinafter named, have, at the times respectively herein mentioned taken the proceedings hereinafter recited upon or in relation to the ratification of the said proposed Amendment, called Article fourteenth namely:

The legislature of Connecticut ratified the amendment June 30th, 1866; the legislature of New Hampshire ratified it July 7th, 1866; the legislature of Tennessee ratified it July 19th, 1866; the legislature of New Jersey ratified it September 11th, 1866, and the legislature of the same State passed a resolution in April 1868, to withdraw its consent to it; the legislature of Oregon ratified it September 19th, 1866; the legislature of Texas rejected it November 1st, 1866; the legislature of Vermont ratified it on or previous to November 9th, 1866; the legislature of Georgia rejected it November 13th, 1866; and the legislature of the same State ratified it July 21st, 1868; the legislature of North Carolina rejected it December 4th, 1866, and the legislature of the same State ratified it July 4th, 1868; the legislature of South Carolina rejected it December 20th, 1866, and the legislature of the same State ratified it July 9th, 1868; the legislature of Virginia rejected it January 9th, 1867; the the legislature of Kentucky rejected it January 10th, 1867; the legislature of New York ratified it January 10th, 1867; the legislature of Ohio ratified it January 11th, 1867, and

the legislature of the same State passed a resolution in January 1868, to withdraw its consent to it; the legislature of Illinois ratified it January 15th, 1867; the legislature of West Virginia ratified it January 16th, 1867; the legislature of Kansas ratified it January 18th, 1867; the legislature of Maine ratified it January 19th, 1867; the legislature of Nevada ratified it January 22d, 1867; the legislature of Missouri ratified it on or previous to January 26th, 1867; the legislature of Indiana ratified it January 29th, 1867; the legislature of Minnesota ratified it February 1st, 1867; the legislature of Rhode Island ratified it February 7th, 1867; the legislature of Delaware rejected it February 7th, 1867; the legislature of Wisconsin ratified it February 13th, 1867; the legislature of Pennsylvania ratified it February 13th, 1867; the legislature of Michigan ratified it February 15th, 1867; the legislature of Massachusetts ratified it March 20th, 1867; the legislature of Maryland rejected it March 23rd, 1867; the legislature of Nebraska ratified it June 15th, 1867; the legislature of Iowa ratified it April 3d, 1868; the legislature of Arkansas ratified it April 6th, 1868; the legislature of Florida ratified it June 9th, 1868; the legislature of Louisiana ratified it July 9th, 1868; and the legislature of Alabama ratified it July 13th, 1868:

Now, therefore, be it known that I, William H. Seward, Secretary of State of the United States, in execution of the aforesaid act, and of the aforesaid concurrent resolution of the 21st of July, 1868, and in conformance thereto, do hereby direct the said proposed amendment to the Constitution of the United States to be published in the newspapers authorized to promulgate the laws of the United States, and I do hereby certify that the said proposed amendment has been adopted in the manner hereinbefore mentioned, by the States specified in the said concurrent resolution, namely, the States of Connecticut, New Hampshire, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, Rhode Island, Wisconsin, Pennsylvania, Michigan, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Louisiana, South Carolina, Alabama, and also by the legislature of the State of

Georgia; the States thus specified being more than three-fourths of the States of the United States.

And I do further certify that the said amendment has become valid to all intents and purposes as a part of the Constitution of the United States.

In testimony whereof, I have hereunto set my hand and caused the seal of the Department of State to be affixed.

Done at the City of Washington this twenty-eighth day of July, in the year of our Lord, one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-third.

[SEAL] WILLIAM H. SEWARD,
Secretary of State.

U. S. GOVERNMENT PRINTING OFFICE: 1868